



California Fair Political Practices Commission

May 27, 1987

Diane Elan Wick
Nielsen, Hodgson, Parrinello & Mueller
650 California Street, Suite 2650
San Francisco, CA 94108

Re: Your Request for Assistance
Our File No. I-87-116

Dear Ms. Wick:

You have written with several questions involving Government Code Section 84308. Because your letter does not involve any specific pending decision, we treat it as a request for informal assistance.^{1/}

QUESTIONS

1. Section 84308(a)(3) exempts "local government agencies whose members are directly elected by the voters." Does that exemption continue to apply to such a body when a new member is appointed to serve out the term of a member who resigned?

2. If a joint powers agency is comprised of members appointed from two or more other agencies whose members are directly elected, is the joint powers agency exempted by Section 84308(a)(3)?

3. Does Section 84308 apply to a condemnation proceeding initiated by an agency?

CONCLUSIONS

1. The exemption in Section 84308(a)(3) for directly elected bodies applies to such a body if a new member is appointed to fill out an unexpired term.

^{1/} Informal assistance is provided pursuant to 2 California Administrative Code Section 18329(c). Informal assistance does not provide the requestor with the immunity set forth in Government Code Section 83114. (2 Cal. Adm. Code Section 18329(c)(3).)

The provisions of the Political Reform Act (the "Act") are found in Government Code Sections 81000-91015. All statutory references are to the Government Code. The Commission's regulations are found in Title 2 of the California Administrative Code. Citations of regulations are to that title.

2. Members of the joint powers agency have not been directly elected to that body. Therefore, the agency is not exempt pursuant to Section 84308(a)(3).

3. A condemnation proceeding initiated by an agency otherwise subject to Section 84308 does involve a license, permit or other entitlement for use. Therefore, Section 84308 does apply.

ANALYSIS

Section 84308 of the Act prohibits officers of appointed boards or commissions from receiving campaign contributions of \$250 or more from a party or participant in certain proceedings. It also requires the officer's disqualification from the decision if a contribution of \$250 or more was received within the preceding 12 months.

Section 84308(a)(3) lists the agencies to which it applies. It specifically exempts:

...local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

Regulation 18438.1 reads, in pertinent part:

(a) The officers of an agency exempted by Government Code Section 84308(a)(3) are exempted only when:

(1) They are acting as members of the governing body of the agency, and the body is acting in its entirety as itself or as the ex officio governing body of any other agency. This applies to a city council or board of supervisors which designates itself as the redevelopment agency for the city or county; or

(2) They are acting as members of any committee or subgroup of the governing body of the agency which is composed solely of members of the governing body of the agency.

(b) The exemption for the officers of local governmental agencies who are directly elected by the voters applies only to agencies whose entire membership consists of officers directly elected by the voters to serve on that agency.

The provisions in subdivision (b) are not intended to overturn the exemption for a city council where a member resigns and another person is appointed to fill out the unexpired term. However, in the case of a redevelopment agency which decides to appoint non-councilmembers to some of its positions, the exemption would no longer apply because the agency board would no longer consist exclusively of council members.

With respect to a joint powers agency made up of representatives from several city councils or other directly elected bodies, the exemption in Section 84308(a)(3) would not apply. Members of exempt bodies are sitting as voting members of a different body. Consequently, the last sentence of Section 84308(a)(3) would control, along with subdivision (b) of Regulation 18438.1. Therefore, the agency and its members are not exempt from the requirements of Section 84308.

Lastly, with respect to condemnation proceedings initiated by an agency otherwise subject to Section 84308, ownership entitles the owner to use the property. Taking of the property through eminent domain would eliminate that entitlement.^{2/} Furthermore, if the agency were to reach an agreement to purchase the property, that action would involve a contract. (Section 84308(a)(5).) Therefore, these condemnation proceedings are covered by Section 84308.

Initiating condemnation proceedings is one method by which the agency may exercise its power of eminent domain to acquire the property without the consent of the owner. It is a corollary of the contract situation. There is no logical difference between that type of action and revocation of a license or permit to use the land. Those two actions are expressly covered by Section 84308. (Regulation 18438.2(a).) We see no reason to distinguish between these activities for purposes of Section 84308.

However, for purposes of the prohibitions contained in Section 84308(b), once the decision to institute condemnation proceedings has been made and suit has been filed, the three-month period following the decision would begin to run. The decision would then be in the hands of the court. However, if the body became involved in settlement negotiations, at that

^{2/} Actions to revoke a license, permit or other entitlement for use are covered by Section 84308. (Regulation 18438.2(a).)


Diane Elan Wick
May 27, 1987
Page 4

time the matter would, once again, be "pending" before that body. The prohibitions would apply until the negotiations were resolved and for three months thereafter.

I trust this letter has adequately responded to your questions. Should you have questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

REL:km

LAW OFFICES OF
NIELSEN, HODGSON, PARRINELLO & MUELLER

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

SACRAMENTO

1030 FIFTEENTH STREET, SUITE 250
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 446-6752

THE HARTFORD BUILDING

650 CALIFORNIA STREET, SUITE 2650

SAN FRANCISCO, CALIFORNIA 94108

TELEPHONE (415) 989-6800

APR 13 3 35 PM '87

FILE NUMBER

April 8, 1987

Robert E. Leidigh
Counsel, Legal Division
Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, California 95804-0807

Re: Government Code Section 84308

Dear Bob:

Thank you for responding to my questions last week regarding Government Code Section 84308 ("Levine") of the Political Reform Act of 1974, as amended.

The first question I asked was whether the Levine exemption in Section 84308(a)(3) for "local governmental agencies whose members are directly elected by the voters" would be invalidated during the period that an appointed member served the remainder of his predecessor's term of office and until the appointed member was subsequently elected by the voters. You stated that the exemption would apply and neither the appointed member nor the remaining members of the local governmental agency would be subject to Levine during that period.

My next question was whether a joint powers agency comprised of elected members of other local governmental agencies, i.e., council members or supervisors, would be exempt from Levine. You stated that because the members serving on the joint powers agency would not have been elected to that specific agency, but were serving because of their capacity as council members or supervisors, the Section 84308(a)(3) exemption would not apply.

My last question was whether Levine would apply to condemnation proceedings initiated by a local governmental agency. You stated that condemnation proceedings initiated by a local governmental agency whose members were directly elected by the voters would not be subject to Levine because of the Section 84308(a)(3) exemption. However, if all members of the local governmental agency are not elected by the voters, then Levine

Mr. Robert E. Leidigh

April 8, 1987

Page 2

would apply and would be subject to the disqualification and prohibitions of Levine. You stated that while the Commission has not given a formal opinion and the Commission staff has not provided informal advice on the subject of condemnation proceedings and Levine, it is your opinion that Levine would apply because a condemnation proceeding would involve an "entitlement for use" and would clearly fall within the intent of Levine. You further opined that Levine would apply in all phases of the condemnation proceeding, including the local governmental agency proceeding wherein the agency members resolve to commence the condemnation action as well as the court action for the condemnation.

If I have misstated any portion of our conversation, please advise me in writing at your earliest convenience. If the foregoing accurately reflects our conversation, please sign the enclosed copy of this letter and return it to me in the enclosed envelope.

Again, thank you for your continued assistance.

Very truly yours,



Diane Elan Wick

Robert E. Leidigh
Council, Legal Division

Date

DEW/tcm/02:12
Enclosures



California Fair Political Practices Commission

April 17, 1987

Diane Elan Wick
Nielsen, Hodgson, Parrinello
& Mueller
1030 Fifteenth Street, Suite 250
Sacramento, CA 95814

Re: 87-116

Dear Ms. Wick:

Your letter requesting advice under the Political Reform Act was received on April 13, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert E. Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).) You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths", is written over the typed name.

Diane M. Griffiths
General Counsel

DMG:plh